

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

**MARTHA W. VLCEK
2480 Ram Crossing Way
Henderson, NV 89074
Certified Public Accountant Certificate No.
63080**

Respondent.

Case No. AC-2012-50


OAH No. AC-2012-50

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on December 26, 2012.

It is so ORDERED November 26, 2012



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2012-50

12 **MARTHA W. VLCEK**
2480 Ram Crossing Way
13 Henderson, NV 89074
14 **Certified Public Accountant Certificate No.**
63080

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
21 Accountancy. She brought this action solely in her official capacity and is represented in this
22 matter by Kamala D. Harris, Attorney General of the State of California, by Sterling A. Smith,
23 Deputy Attorney General.

24 2. Respondent Martha W. Vlcek (Respondent) is represented in this proceeding by
25 attorney Eugene Illovsky, whose address is: Morrison & Foerster, 755 Page Mill Road, Palo
26 Alto, California 94304.

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1 3. On or about November 13, 1992, the California Board of Accountancy issued
2 Certified Public Accountant Certificate No. 63080 to Martha W. Vlcek (Respondent). The
3 Certified Public Accountant Certificate was renewed inactive (without continuing education) for
4 the period June 1, 2004, through May 31, 2006, was expired on June 1, 2006, through August 24,
5 2006, was renewed inactive from August 25, 2006, through May 31, 2008, was expired from June
6 1, 2008, through July 24, 2008, was renewed inactive from July 25, 2008, through May 31, 2010,
7 renewed active (with continuing education) from June 1, 2010, through May 31, 2012, and was
8 renewed inactive from June 1, 2012, through May 31, 2014. The Certified Public Accountant
9 Certificate was in full force and effect at all times relevant to the charges brought in Accusation
10 No. AC-2012-50 and will expire on May 31, 2014, unless renewed.

11 JURISDICTION

12 4. Accusation No. AC-2012-50 was filed before the California Board of Accountancy
13 (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The
14 Accusation and all other statutorily required documents were properly served on Respondent on
15 August 21, 2012. Respondent timely filed her Notice of Defense contesting the Accusation. On
16 or about October 10, 2012, a First Amended Accusation was filed and on October 16, 2012,
17 served upon Respondent through her counsel. A copy of First Amended Accusation No. AC-
18 2012-50 is attached as exhibit A and incorporated herein by reference.

19 ADVISEMENT AND WAIVERS

20 5. Respondent has carefully read, fully discussed with counsel, and understands the
21 charges and allegations in First Amended Accusation No. AC-2012-50. Respondent has also
22 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
23 Settlement and Disciplinary Order.

24 6. Respondent is fully aware of her legal rights in this matter, including the right to a
25 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
26 her own expense; the right to confront and cross-examine the witnesses against her; the right to
27 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
28 compel the attendance of witnesses and the production of documents; the right to reconsideration

1 and court review of an adverse decision; and all other rights accorded by the California
2 Administrative Procedure Act and other applicable laws.

3 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
4 every right set forth above.

5 CULPABILITY

6 8. Respondent admits the truth of each and every charge and allegation in First
7 Amended Accusation No. AC-2012-50.

8 9. Respondent agrees that her Certified Public Accountant Certificate is subject to
9 discipline and she agrees to be bound by the CBA's probationary terms as set forth in the
10 Disciplinary Order below.

11 CONTINGENCY

12 10. This stipulation shall be subject to approval by the California Board of Accountancy.
13 Respondent understands and agrees that counsel for Complainant and the staff of the California
14 Board of Accountancy may communicate directly with the CBA regarding this stipulation and
15 settlement, without notice to or participation by Respondent or her counsel. By signing the
16 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
17 to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to
18 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
19 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
20 between the parties, and the CBA shall not be disqualified from further action by having
21 considered this matter.

22 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
23 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
24 effect as the originals.

25 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
26 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
27 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
28 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary

Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 63080 issued to Respondent Martha W. Vlcek (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years, to run concurrently with the period of suspension, upon the terms and conditions given below.

1. Suspension

Certified Public Accountant Certificate No. 63080 issued to Respondent is suspended for three (3) years, commencing on the effective date of the decision. During the period of suspension, Respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051.

2. Obey All Laws

Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

3. Cost Reimbursement

Respondent shall reimburse the CBA \$4,179.66 for its investigation and prosecution costs. The payment shall be made within sixty (60) days of the date the CBA's decision is final.

4. Submit Written Reports

Respondent shall submit, within 10 days of completion of the quarter, written reports to the CBA on a form obtained from the CBA. Respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations

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1 shall contain statements relative to respondent's compliance with all the terms and conditions of
2 probation. Respondent shall immediately execute all release of information forms as may be
3 required by the CBA or its representatives.

4 **5. Personal Appearances**

5 Respondent shall, during the period of probation, appear in person or by telephone at
6 interviews/meetings, as directed by the CBA or its designated representatives, provided such
7 notification is accomplished in a timely manner.

8 **6. Comply With Probation**

9 Respondent shall fully comply with the terms and conditions of the probation imposed by
10 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
11 its monitoring and investigation of Respondent's compliance with probation terms and conditions.

12 **7. Practice Investigation**

13 Respondent shall be subject to, and shall permit, a practice investigation of Respondent's
14 professional practice. Such a practice investigation shall be conducted by representatives of the
15 CBA, provided notification of such review is accomplished in a timely manner.

16 **8. Comply With Citations**

17 Respondent shall comply with all final orders resulting from citations issued by the
18 California Board of Accountancy.

19 **9. Violation of Probation**

20 If Respondent violates probation in any respect, the CBA, after giving her notice and an
21 opportunity to be heard, may revoke probation and carry out the disciplinary order that was
22 stayed. If an accusation or a petition to revoke probation is filed against Respondent during
23 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
24 probation shall be extended until the matter is final.

25 The CBA's Executive Officer may issue a citation under California Code of Regulations,
26 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
27 licensee on probation.


28 ///

1 I have read and fully discussed with Respondent Martha W. Vlcek the terms and conditions
2 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
3 its form and content.

Morrison & Foerster

DATED:

10/31/12


By: Eugene Illovsky
Attorney for RespondentENDORSEMENT

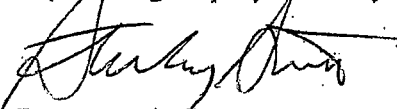
4 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
5 submitted for consideration by the California Board of Accountancy of the Department of
6 Consumer Affairs.

Dated:

11/1/2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General


STERLING A. SMITH
Deputy Attorney General
Attorneys for Complainant

SA2012106786
Stipulation.rtf

Exhibit A

Accusation No. AC-2012-50

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
4 State Bar No. 84287
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 445-0378
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2012-50

13 **MARTHA W. VLCEK**
2480 Ram Crossing Way
14 Henderson, Nevada 89074

**FIRST AMENDED
ACCUSATION**

15 Certified Public Accountant Certificate No. CPA 63080

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Patti Bowers (Complainant) brings this First Amended Accusation solely in her
22 official capacity as the Executive Officer of the California Board of Accountancy, Department of
23 Consumer Affairs.

24 2. On or about November 13, 1992, the California Board of Accountancy issued
25 Certified Public Accountant Certificate Number CPA 63080 to Martha W. Vlcek (Respondent).
26 The Certified Public Accountant Certificate was renewed inactive (without continuing education)
27 for the period June 1, 2004, through May 31, 2006, was expired on June 1, 2006, through August
28 24, 2006, was renewed inactive from August 25, 2006, through May 31, 2008, was expired from

1 June 1, 2008, through July 24, 2008, was renewed inactive from July 25, 2008, through May 31,
2 2010, renewed active (with continuing education) from June 1, 2010, through May 31, 2012, and
3 was renewed inactive from June 1, 2012, through May 31, 2014.

4 JURISDICTION

5 3. This Accusation is brought before the California Board of Accountancy (CBA),
6 Department of Consumer Affairs. All references to "Code" mean the California Business &
7 Professions Code unless otherwise indicated.

8 4. Code section 5100 provides, in pertinent part, that:

9 After notice and hearing the board may revoke, suspend, or refuse to renew any permit or
10 certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing
11 with Section 5080), or may censure the holder of that permit or certificate for unprofessional
12 conduct that includes, but is not limited to, one or any combination of the following causes:

13 ...

14 (h) Suspension or revocation of the right to practice before any governmental body or
15 agency.

16 ...

17 (l) The imposition of any discipline, penalty, or sanction on a registered public
18 accounting firm or any associated person of such firm, or both, or on any other holder of a permit,
19 certificate, license, or other authority to practice in this state, by the Public Company Accounting
20 Oversight Board or the United States Securities and Exchange Commission, or their designees
21 under the Sarbanes-Oxley Act of 2002 or other federal legislation.

22 ..."

23 5. Code section 5109 provides that "the expiration, cancellation, forfeiture, or
24 suspension of a license, practice privilege, or other authority to practice public accountancy by
25 operation of law or by order or decision of the board or a court of law, or the voluntary surrender
26 of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with
27 any investigation of or action or disciplinary proceeding against the licensee, or to render a
28 decision suspending or revoking the license".

1 COST RECOVERY

2 6. Section 5107 of the Code provides, in pertinent part, that "(a) the executive officer of
3 the Board may request the administrative law judge, as part of the proposed decision in a
4 disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a
5 violation or violations of this chapter to pay to the board all reasonable costs of investigation and
6 prosecution of the case, including, but not limited to, attorney's fees. The board shall not recover
7 costs incurred at the administrative hearing."

8 FIRST CAUSE FOR DISCIPLINE

9 (Suspension or Revocation by Governmental Agency)

10 7. Respondent is subject to disciplinary action under Code section 5100, subdivision (h),
11 in that in or about November 2011, the Securities and Exchange Commission, in the case entitled
12 *In the Matter of Martha W. Vlcek, CPA*, Administrative Proceeding File No. 3-14625, entered an
13 "Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's
14 Rules of Practice" suspending Respondent from appearing or practicing before the Commission.
15 The ground of suspension was and is that in *Securities and Exchange Commission, plaintiff v.*
16 *Steven M. Des Champs and Martha W. Vlcek, defendants*, United States District Court, District of
17 Nevada, Case No. 2:08-cv-01279-KJD-GWF, a "Final Judgment of Permanent Injunction and
18 Other Relief as to Defendant Martha W. Vlcek" was entered permanently enjoining her, among
19 other things, from further violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of
20 1933, and Section 13(a) of the Securities Exchange Act of 1934. The Final Judgment of
21 Permanent Injunction arose from Respondent's employment as an accountant of Bally
22 Technologies, Inc. Respondent was also ordered to disgorge \$10,849.00 representing profits
23 gained as a result of Respondent's wrongful conduct. Respondent was also assessed a civil
24 penalty of \$30,000.00 and prejudgment interest of \$3,509.00.

25 The Securities and Exchange Commission Complaint alleged, among other things, that
26 from the fourth quarter of fiscal year 2003 through the second quarter of fiscal year 2004,
27 Respondent fraudulently recognized revenue on bill and hold transactions, made misleading
28 disclosures and omissions regarding revenue recognition, and made materially false statements to

1 Bally Technologies's outside auditors when she represented the transactions were proper under
2 generally accepted accounting principles. The improper bill and hold sales led to a twenty-five
3 (25%) overstatement of Bally's reported earnings per share for the fourth quarter of fiscal year
4 2003 and to thirty-three percent (33%) and twenty-seven percent (27%) overstatements of Bally's
5 reported quarterly earnings per share in the first and second quarters of 2004, respectively.

6 SECOND CAUSE FOR DISCIPLINE

7 (Discipline, Sanction or Penalty against Respondent by SEC)

8 8. Respondent is subject to disciplinary action under Code section 5100, subdivision (1),
9 in that in or about November 2011, the Securities and Exchange Commission, in the case entitled
10 *In the Matter of Martha W. Vlcek, CPA*, entered an "Order Instituting Administrative Proceedings
11 Pursuant to Rule 102(e) of the Commission's Rules of Practice" disciplining or sanctioning
12 Respondent by suspending her from appearing or practicing before the Commission. The
13 grounds for the discipline, sanction or penalty are described in Paragraph 7 above.

14 PRAYER

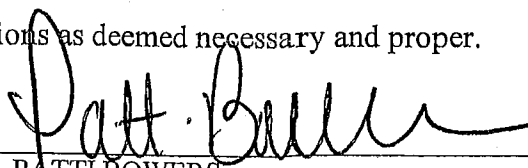
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and
16 that following the hearing, the Board issue a decision:

17 1. Revoking, suspending or otherwise imposing discipline upon Certified Public
18 Accountant Certificate No. CPA 63080 issued to Respondent Martha W. Vlcek;

19 2. Ordering Respondent to reimburse the California Board of Accountancy for its costs
20 of investigation and prosecution of this case according to proof at the hearing under Code section
21 5107; and

22 3. Taking such other and further actions as deemed necessary and proper.

23 DATED: 10/10/2012

24 
PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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